

## REMARKS

In this Response, Applicant amends claims 1, 3 and 8 to address the grounds of rejection set forth by the Examiner. Applicant also cancels claims 10, 12, 13 and 19-32 without prejudice, and adds new claims 44-54. As such, claims 1-9, 11, 14-18 and 44-54 are now pending in the present application; wherein claims 33-43 have been withdrawn in response to an earlier restriction requirement as noted by the Examiner. The amendments to the claims are being made solely to expedite prosecution of the present application and do not constitute an acquiescence to any rejections of the Examiner. Support for the claim amendments and newly-added claims can be found throughout the application. Applicant reserves the option to further prosecute the same or similar claims as originally presented at a later time.

### Claim Rejections

#### 35 U.S.C. §§ 102(b), 103(a)

In the Office Action, the Examiner rejected claims 1-14, 16-25, and 27-29 under 35 U.S.C. §§ 102(b) as allegedly being anticipated by U.S. Patent No. 3,955,710 to Commisso (hereinafter, "Commisso"). The Examiner also rejected claims 1-32 under 35 U.S.C. § 103(a) as allegedly being obvious over U.S. Patent No. 3,851,789 to Case et al. (hereinafter, "Case et al.") in view of Commisso. Applicant respectfully traverses these rejections.

As indicated above, Applicant has cancelled claims 10, 12, 13 and 19-32 without prejudice, and added new claims 44-54. Thus, the response herein is directed to currently pending claims 1-9, 11, 14-18 and 44-54.

Independent claim 1, as amended, of the present application is directed to an optional venting container. The container comprises a base and a lid releasably latched to the base, with at least one ventable area formed therein. The ventable area has a perimeter defined by a cut including a first interruption defining a hinge portion and a second interruption spaced substantially from the first interruption to define a frangible portion. The ventable area is adapted to form a vent by applying pressure within the perimeter to rupture the frangible portion. For purposes of illustration and not limitation, Figure 2 of the present application discloses a representative embodiment of an optional venting container (10) including at least one ventable area (30) including perimeter (30a-c) defined by a cut, which includes a first interruption to

define hinge portion (e.g., between 30d and 30e) and a second interruption substantially spaced from the first interruption to define a frangible portion (30g).

In contrast to Applicant's invention as claimed in claim 1, neither Commisso nor Case et al. discloses, among other things, an optional venting container having at least one ventable area including a noncontinuous cut defining a frangible portion substantially spaced from a hinge portion. Indeed, and as recognized by the Examiner, Case et al. does not even disclose a container having a ventable area. Commisso, on the other hand, discloses a container having finger openings. The finger apertures 15 depicted in the figures of Commisso are formed by a continuous radial cut 18 extending from (and in fact beyond) one side of hinge 17 to the other side of hinge 17. Although Commisso does suggest that a series of perforations can be used in place of the radial cut (col. 2, lines 16-22), there is no disclosure or suggestion by Commisso of a ventable area including a noncontinuous cut having a first interruption defining a hinge portion and a second interruption substantially spaced from the first interruption to define a frangible portion. Furthermore, there is no suggestion or motivation provided by the prior art of record to combine the finger openings of Commisso with the container of Case et al.

Hence, the prior art of record, individually and in combination, does not disclose or suggest the optional venting container as recited in amended claim 1 of the present application. Independent claim 1, and claims 2-9, 11, 14-18 and 44-54 depending therefrom, are allowable over the prior art of record.

Moreover, dependent claims 2-9, 11, 14-18 and 44-54 are further allowable for reciting additional features not disclosed by the prior art relied upon by the Examiner.

Specifically, dependent claims 2 and 3 further recite the material of construction of the base and the lid of the container. Dependent claims 4-8 and 14-18, further specify the configuration and shape of the container, as well as the number and locations of the ventable areas. Dependent claims 9, 11 and 14 are directed to the configuration of the ventable area.

Similarly, newly added dependent claims 44-54 also recite patentable subject matter not disclosed or suggested by Commisso or Case et al. For example, newly added dependent Claim 44 recites that the at least one ventable area is formed in the sidewall of the lid. Dependent claim 45 further states that the cut portion defines only one frangible portion, and claim 46 depending therefrom recites that the frangible portion is disposed opposite the hinge portion. Dependent claims 47-51 specify the depth of the cut defined along the perimeter of the ventable area.

Dependent claims 52-54 recite the location of the ventable areas relative claimed aspects of the container.

None of the prior art of record, individually or in combination, discloses or suggests an optional venting container have each and every feature as claimed. Thus, at least for these reasons, dependent claims 2-9, 11, 14-18 and 44-54 are further allowable over the prior art relied upon by the Examiner.

#### Formal Request for Interview

Applicant respectfully requests an interview with the Examiner to discuss the present application and the prior art of record. Applicant's Attorney Brian Pollack may be reached at telephone number (212) 294-5331 to schedule a mutually convenient date and time and to provide assistance or additional information as required.

#### **CONCLUSION**

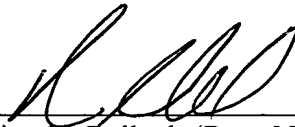
On the basis of the foregoing Amendment and Remarks, Applicant respectfully submits that the pending claims of the present application are allowable over the prior art of record. Applicant thus respectfully requests that the previous rejections be withdrawn, and that claims 1-9, 11, 14-18 and 44-54 be allowed by the Examiner. Favorable consideration and timely allowance of this application are respectfully requested.

Applicant authorizes the Commissioner to charge any additional fees and/or credit any overpayments associated with this paper to Winston & Strawn Deposit Account No. 50-1814, Ref. No. 86012-36400-USPT. Further, if a fee is required for an extension of time under 37 C.F.R. § 1.136 not provided for above, Applicant requests such extension and authorizes the

charging of the extension fee to Winston & Strawn Deposit Account No. 50-1814, Ref. No. 86012-36400-USPT.

Respectfully submitted,

Date: January 3, 2005

  
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